



P-PIL
Promoting Public Interest Lawyering

FOSTERING EFFECTIVE ACCESS FOR THE DISABLED
Research Note on Scribes for the Visually Impaired

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I. INTRODUCTION

The Indian Constitution recognizes the rights of disabled to access educational opportunities and facilities without any significant barriers. In this regard, several educational institutions and State departments have fostered disability friendly policies by permitting candidates to bring their own scribes and/or to use computers to take their exam.

These policies have been formulated by various institutions based on the rights guaranteed to persons with disabilities in various legal instruments, both national and international, as discussed in detail in the sections below.

These policies unanimously suggest that it is only fair that the candidate be allowed to choose her own scribe. Furthermore, the Bombay High Court *vide* order dated December 18, 2006 in Public Interest Litigation No. 129 of 2003 laid down elaborate 'Guidelines for Appointment and Availing Facility of Scribe', the most critical components of which are extracted below. We propose that similar guidelines be framed for the NLU Delhi entrance exam as well.

1. The Scribe/writer should either be provided by the examining authority or be arranged by the candidate himself/herself at the discretion of the candidate.
2. It is desirable that the candidate and the scribe are from the same stream.
3. In case the candidate avails the services of his/her own scribe/writer, the scribe/writer should be one grade junior in academic qualification than the candidate if from the same stream. However, this condition shall not apply if the scribe/writer is from a different stream.
4. No other restriction should be imposed on the selection of a scribe/writer.

Further, the University Grants Commission (*hereafter* UGC) *vide* letter dated January 2006 directed all Universities to extend computer facilities to all visually impaired students who desired to take their exam on a computer. The guidelines were issued pursuant to a similar request from a student registered with the Anna Malai Open University before the Chief Commissioner of the Office of Persons with Disabilities. Following this, the Commissioner *vide* letter dated 25 July 2005 requested the UGC to issue an advisory to all universities and institutions to provide laptop facilities to visually impaired candidates. The UGC did so, thereby indicating that this norm is now applicable to all Universities and educational institutions under the purview of the UGC and MHRD.

II. EXISTING LEGAL FRAMEWORK

A. Rights of Persons with Disabilities Under the Indian Constitution

The courts have time and again interpreted the trio of Articles 14, 19 and 21 expansively to offer meaningful protection to the weaker sections of society. The non-provision of enabling facilities to the disabled (such as scribes for exams) would amount to *discrimination* under Article 14 of the Constitution of India.¹ Further, it would also violate the right to life under Article 21 of the Constitution of India.

Section 14 of the Constitution of India permits a ‘reasonable classification’ between persons to achieve a legitimate policy objective. The key statutory enactment dealing with the rights of the disabled is the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, as discussed below.

B. Rights under the PWDA

The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 Act (*hereafter PWDA*) came into force on 07 February 1996 in order to give effect to the ‘Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region’, which was adopted by India in 1992. The PWDA makes special accommodations for children with disabilities. The Act requires the governments to provide free education in an appropriate environment to all children with disabilities until the age of 18 years.² In order to realize rights under the Act, Section 30 imposes an obligations on states to provide access to transport facilities, remove any architectural barriers, supply books and uniforms, provide scholarships, setup grievance redressal mechanism and design curriculum to suit the needs of children with disabilities.

Section 31 of the Act provides that ‘all educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision’.

C. Institutional Policies

The organizers of various competitive examinations have framed guidelines under Section 31 for provision of scribe to the disabled. The notification on ‘**Examination Writing Policy**

¹ *State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75; *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318; *R.K. Dalmia v. Justice Tendolkar*, AIR 1958 SC 538; *In re Special Courts Bill*, 1978, (1979) 1 SCC 380;

² PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995, § 26(a).

for Students with Disability' issued by the University of Delhi on November 09, 2011 states that:

Students, who will be eligible for writer/scribe/interpreter in any of the categories mentioned above, **may arrange for their own writers, scribes, interpreters** as the case may be. In case they are unable to do so, the Superintendent of the Examination Centre would provide the same on receipt of written request from the candidate at least 24 hours prior to the commencement of the examination. A writers' bank must be created in each college for the purpose for a ready availability of writers whenever required. Support may be sought from the Equal Opportunity Cell, if need be. The candidate must be given an opportunity to satisfy himself/herself about the writer's ability to take dictation from the candidate.

As far as possible the writer should be less qualified than the examinee. However, if the writer is more qualified than the examinee, the Superintendent of examination centre should ensure that the writer has not studied the subject at the higher level in which the examinee is appearing.

Similarly in matters relating to employment in public offices, candidates are permitted to get their own scribes. The table below encapsulate guidelines that apply to candidates appearing for various examinations relating to recruitment in public offices:

1	Central Bank of India, <i>Guidelines Regarding Persons with Disabilities</i> (Online Examination for Recruitment of Specialist Officers, 2012)	<ul style="list-style-type: none"> • The candidate will have to arrange his own scribe at his own cost. • The academic qualification of the scribe should be one grade lower to that of the candidate.
2	Coal India Limited, <i>Guidelines for Use of a Scribe or Paper Writer for Visually Handicapped or Orthopedically Handicapped Candidates</i> (Recruitment of Management Trainees, 2011)	<ul style="list-style-type: none"> • The candidate will have to arrange his own Scribe at his own cost and inform the Centre Head beforehand. • The academic qualifications of the Scribe should be one grade lower than the eligibility criteria stipulated for the post, i.e. where the eligibility criteria stipulated is gradation, the qualification should not be more than HSC/XIth/PUC.
3	Life Insurance Corporation, <i>Use of Scribe</i> (Recruitment for the Post of Assistant Administrative Officer, 2010)	<ul style="list-style-type: none"> • Candidate will have to arrange his own Scribe at his own cost. • The academic qualification of the Scribe should be one grade lower than the stipulated minimum eligibility criteria and the Scribe should possess less marks than the candidate.

4	State Bank of India, <i>Notes for Orthopedically Handicapped (OH)/ Visually Handicapped (VH)</i> (Recruitment of Probationary Officers in Associate Banks of SBI, 2010)	<ul style="list-style-type: none"> • The candidate will have to arrange his/her own scribe/writer at his/her cost. • Scribe/writer must be possessing one grade lower educational qualifications of the candidate (i.e. graduation in this recruitment). Thus the qualification of scribe/writer should not be more than XII standard.
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From the above, the general policy on scribes is very clear in that these institutions confer on the disabled the right to get a scribe of his choice subject to very basic eligibility criteria.

D. Rights under the New Bill

With the ratification of the United Nations Convention on Rights of Persons with Disabilities (*hereafter UNCRPD*), the Government felt the need to usher in a more comprehensive new legislation to offer meaningful protection to the disabled. The government is presently considering a draft of the Persons with Disabilities Bill, 2011. Section 23K of the draft Bill states that:

every person with disability appearing for an entrance examination for any higher educational institution has **a right to adequate, necessary and appropriate support for the purposes of such examination;**

Further, Section 23A(1)(k)(iv) of the Bill defines 'Support' to include 'provision of amanuensis or other technological support as required'.

The Center for Disability Studies at NALSAR University of Law in its report on '**The Rights of Persons with Disabilities Bill, 2011**' to the Committee appointed by the Ministry of Social Justice and Empowerment, Government of India laid down guiding principles for appointment of scribes for the disabled. The report strongly urges that:

...basic guiding principles relating to scribes must be incorporated in the statute: only eligibility criteria for scribes should be that at the time person is acting as scribe, person shouldn't be eligible to appear for the exam, or should not have been eligible over last 3 years. Further, **the Scribe should be selected at the discretion of candidate.** Competence of the scribe is important.

The scribe policies of various institutions and the above report recognize the right of a disabled candidate to choose her own scribe. Hence, the State has an obligation to maintain *reasonable accommodation* with regard to the discretion of the candidate, in choosing a scribe.

III. JUDICIAL PRONOUNCEMENTS

While there have been several decisions in relation to the rights of the visually impaired in relation to examinations and scribes, we discuss the most important ones below:

A. Maharashtra Rajya Apang Karmachari Sanghatana v. Maharashtra Housing Area Development Authority³

A Public Interest Litigation was filed by the Maharashtra Rajya Apang Karmachari Sanghatana against the guidelines of the Maharashtra Housing Area Development Authority on its recruitment examination of visually impaired candidates. The impugned guidelines reads as follows: (1) candidate's scribe must himself have secured a lower score than the candidate in a previous examination or less than 60 per cent marks in his examination, and (2) visually challenged students and their scribes shall be criminally prosecuted if found indulging in malpractice during exams.

The Bombay High Court invalidated both the guidelines. The former was invalidated because it might affect the candidate adversely in the examination. The latter was invalidated because the Court felt that it would create a wrong environment in which good scribes will be discouraged to come forward to the aid of the visually impaired. The Court asked the MHADA to 'be sensitive' to the visually impaired and directed it to remove the provision.

B. Bombay Case and Guidelines

Furthermore, the Bombay High Court *vide* order dated December 18, 2006 in Public Interest Litigation No. 129 of 2003 laid down elaborate 'Guidelines for Appointment and Availing Facility of Scribe'. They are as follows:

1. The Scribe/writer should either be provided by the examining authority or be arranged by the candidate himself/herself at the **discretion of the candidate**.
2. Any attempt at cheating can be curbed by ensuring proper supervision and vigilance, by the invigilators.
3. Considering the practical problems, it is necessary that if the scribe is provided by the examination conducting authorities, such authorities must ensure the competence of the scribe/writer.

³ Writ petition, December 8, 2011 (Mohit Shah, Roshan Dalvi) (Bombay High Court)

4. The examining authority should make it very clear in the advertisement itself regarding availability of scribe/writers.
5. The Candidate should furnish in the application form itself that he/she would like to avail the facility of writer from the examining body or he himself would arrange for the scribe/writer.
6. The examining body should identify the scribes/writers and make the panel at district/Division or state level as per requirement of examination.
7. The Panels of scribe should be as per requirement of the stream/discipline eg. Arts, Commerce, Science & Mathematics, Engineering, Medical etc. and only eligible scribes should be included in the panel.
8. It is desirable that the candidate and the scribe are from the same stream.
9. **In case the candidate avails the services of his/her own scribe/writer, the scribe/writer should be one grade junior in academic qualification than the candidate if from the same stream. However, this condition shall not apply if the scribe/writer is from a different stream.**
10. **No other restriction should be imposed on the selection of a scribe/writer.**
11. The Chief invigilator of the examination center should have discretionary powers to accept last minute change of scribes under exigencies
12. More than 1 scribe may not be permitted to write different papers. However, subject * J clause (11) above such change be permitted.
13. The letter approving the scribe should contain the following information in writing:
 - a. The extra time given to the candidate
 - b. He shall be seated separately
 - c. Beside the date and subject name, scribe name should be printed for every paper.
 - d. Contact address and phone number of competent authority should also be printed for last minute change of scribe.
14. Refreshments, if any to scribes/writers should either be served before or after the examination

IV. RIGHTS OF THE DISABLED UNDER INTERNATIONAL CONVENTIONS

UNCRPD imposes an obligation on States ‘to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity’.⁴ India ratified the Convention on October 01, 2007.

Article 5(3) of the Convention requires the State, on a non-discriminatory basis, to take all appropriate steps to ensure that *reasonable accommodation* is provided to promote equality and eliminate discrimination of the disabled with others. Article 2 of UNCRPD defines ‘*reasonable accommodation*’ as:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms

Article 24 of the UNCRPD then speaks about “reasonable accommodation” within the specific context of education by stipulating that “*States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.*”

Lastly, under the Convention, India is obliged to take the following measures under Article 4(1):

- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

From the above, it is clear that international law mandates that those with disabilities such as the visually impaired are provided with all the necessary support (such as an

⁴ UNITED NATIONS CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES, ART. 1

effective scribe system) so that they are not disadvantaged in any way and are on a near equal footing with those that write the exam without any disability.

A. Applicability UNCRPD in India

Article 51(c) of the Constitution dealing with 'Promotion of International Peace and Security' imposes an obligation on the State to make efforts to 'foster respect for international law and treaty obligations'. Further, Article 73 read with Article 253 and Entry 14 of the Union List grants the Union powers to enter into international treaties and conventions. Courts have held that any international treaty obligation undertaken by the State takes up is valid and binding as long as it is not inconsistent with the provisions of the Constitution and any Parliamentary enactment.⁵

To this extent, courts have adopted principles from international conventions and norms and effectively construed them as part of domestic law unless they conflicted with existing parliamentary enactments or the constitution. However, this has been more or less limited to cases involving human rights and the like (and has not extended to international conventions dealing with trade etc).⁶⁷ Cases such as *Vishaka v. State of Rajasthan*⁸ are illustrative of this approach.

Further, even in the context of disability rights, the Supreme court has read in the provisions of the UNCRPD into domestic laws to provide effective provision to the disabled (See *Suchita Shrivastava v. Chandigarh Administration*.⁹)

⁵ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁶ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 ; *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

⁷ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁸ *Id.*

⁹ (2009) 9 SCC 1.